

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI

DAVID AND SUZANNE DOUGLAS,)
)
 Plaintiffs,)
)
v.) 6:10-cv-03379-RED
)
GREEN TREE,)
)
 Defendant.)

DEFENDANT’S MOTION FOR LEAVE TO FILE A MOTION TO DISMISS

COMES NOW Defendant, Green Tree (“Defendant”), by and through counsel, and for its Motion for Leave to File a Motion to Dismiss hereby states as follows:

1. On or about September 16, 2010, Plaintiff David Douglas and Plaintiff Suzanne Douglas (“Plaintiffs”) filed their Petition in this matter listing several allegations including breach of fiduciary duty, negligence, fraud, breach of the implied covenant of good faith and fair dealing, intentional infliction of emotional distress and violations of the Truth in Lending Act.

2. Plaintiffs claim that Defendant was served on September 22, 2010 by virtue of the Proof of Service filed by Plaintiffs on October 15, 2010. Doc. 5 at pg 2. However, the Proof of Service has not been fully completed. The Proof of Service states “I personally served the summons on the individual at (*place*) Green Tree on (*date*) 22 Sept....” Doc. 5 at pg 2. Defendant notes that there is no individual defendant in this matter, only an entity.

3. In the event that Plaintiffs wished to effect service on Defendant, on the Proof of Service it would have been proper for them to specify the name of the person who is designated by law to accept service of process on behalf of Defendant. That portion of the Proof of Service is also incomplete, and reads “I served the summons on (*name of individual*) Green Tree, who is

designated by law to accept service of process on behalf of (*name of organization*) _____
on (*date*) _____....” Doc. 5 at pg 2.

4. Counsel for Defendant is only aware a copy of Plaintiffs’ Petition being mailed to Defendant, but has received a docket entry from the Court indicating a response is due by October 13, 2010.

5. Counsel for Defendant has already entered a special appearance in this case and Plaintiffs will not be prejudiced allowing Defendant to file a responsive motion out of time.

6. Defendant has attached as Exhibit “A” its Motion to Dismiss or in the Alternative For a More Definite Statement and Suggestion in Support that it seeks to file.

WHEREFORE Defendant prays this Honorable Court for leave to file its Motion to Dismiss, and for such other relief as this Court deems just and proper under the circumstances.

Respectfully Submitted,

/s/David G. Wasinger
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Attorneys for Defendant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing was submitted via the Court's CM/ECF system to all parties receiving notice thereby. A true and accurate copy was also sent by First Class US Mail on this 15th day of October, 2010 to the following:

David Douglas
2300 E. Hartley
Ozark, MO 65721
Plaintiff

Suzanne Douglas
2300 E. Hartley
Ozark, MO 65721
Plaintiff

/S/David G. Wasinger